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July 6, 2012

**Via: ECF and Regular Mail**

Honorable Katherine B. Forrest  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 745  
New York, New York 10007-1581

**Re: JAMES ABRAHAM, ET AL. v. RICHARD AQUILONE, JR.**  
**Index No.: 11-cv-05947 (KBF)**  
**Our File No.: 628-16385**

Dear Judge Forrest:

We are counsel for defendant, Richard Aquilone, Jr., in the above captioned marine collision matter. We are writing to Your Honor 1) to request additional time to complete discovery, and 2) to issue an order compelling the Assistant District Attorney (ADA), County of New York, to allow the parties hereto to inspect the physical evidence being held by the ADA.

1. According to Your Honor's discovery order following the **May 13, 2012**, telephonic conference, all fact discovery, including expert disclosures, is to be concluded by **July 27, 2012**. We have encountered scheduling issues involving party and non-party depositions. Also, on **June 26, 2012**, we spoke with Mr. Randolph Clark, Assistant District Attorney, County of New York, and requested to speak with non-party witnesses, specifically the New York Police Department (NYPD) officers involved in responding and investigating this casualty. Mr. Clark denied our request. Accordingly, we are compelled to subpoena the investigating and responding police officers. Mr. Clark advised that he would seek to quash any subpoena served on these witnesses. We also have learned that the Grand Jury is scheduled to meet and hear witness testimony on **July 9, 2012**.

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To date, the parties have exchanged interrogatories and document request, and the following depositions have been noticed: defendant Richard Aquilone, Jr. noticed for **July 2, 2012** (adjourned due to scheduling conflict); plaintiff James Abraham noticed for **July 11, 2012**; plaintiff Varghese Puthuvamkunnath noticed for **July 11, 2012**; plaintiff Salomy Puthuvamkunnath noticed for **July 12, 2012**; plaintiff Patrick Hasan noticed for **July 12, 2012**; and, non-party witness Jessica Salles noticed for **July 10, 2012**. We are also working toward scheduling the depositions of additional non-party witnesses from the M/V SHARK vessel.

For the foregoing reasons and although discovery is progressing, it is respectfully requested that Your Honor grant an additional 45-day extension of discovery, as follows:

- a. All fact discovery shall be completed no later than **September 11, 2012**.
- b. By the end of fact discovery, defendant shall move to strike plaintiffs jury demand if he wishes to do so. In the event of any such motion, plaintiffs shall respond within 14 days.
- c. Plaintiffs expert disclosures shall be made on or before **September 11, 2012**, and defendants expert disclosures shall be made on or before **September 25, 2012**.
- d. All expert discovery shall be completed no later than **October 16, 2012**.
- e. The parties shall appear for a pretrial conference on **October 16, 2012 at 10:00 a.m.**
- f. A one-week jury trial to begin on **October 23, 2012**.

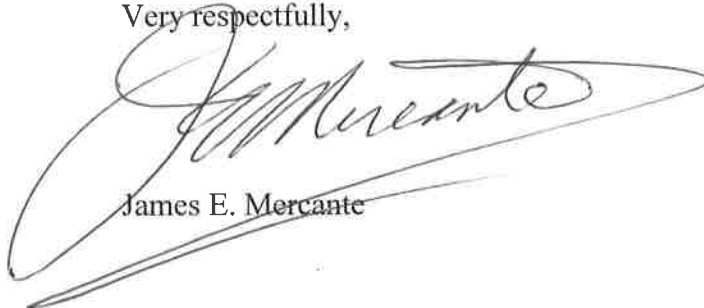
This is the first extension of discovery requested. Counsel for plaintiffs does not object to this extension request.

2. As set forth in defendant's motion to stay discovery in this civil action (while the criminal matter is pending against Mr. Aquilone), the ADA is holding crucial evidence and has denied both parties access to the evidence, including the two vessels involved in the collision. For the reasons set forth in the aforementioned motion, this evidence is critical to an accident reconstruction.

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Therefore, we respectfully request that Your Honor issue an order compelling the Office of the District Attorney, County of New York, to allow the parties to access and inspect the evidence being withheld.

Very respectfully,

A handwritten signature in black ink, appearing to read "J. Mercante", with a large, sweeping flourish underneath.

James E. Mercante

JEM/RG/bl

**Copy: Via ECF and Regular Mail**

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